



May 9, 2019

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: *Ex Parte* Communication: WC Docket No. 10-90**

Dear Ms. Dortch:

On May 7, 2019, Mike Saperstein of USTelecom, Steve Coran of Lerman Senter PLLC (representing WISPA), and the undersigned of ITTA met with Suzanne Yelen, Sue McNeil, and Ian Forbes of the Wireline Competition Bureau regarding the *Order* in the above-referenced proceeding, as well as the pending petitions for reconsideration and applications for review of it, and responsive pleadings thereto.<sup>1</sup> Also participating by telephone were Stephen Wang of the Wireline Competition Bureau, Cathy Zima and Alec MacDonell of the Office of Economics and Analytics (OEA), Mark Radabaugh of Amplex Electric (representing WISPA), Tiffany Smink, Jamal Boudhaouia, and Tom Freeberg of CenturyLink, Ann Morrison, Jason Rokeach, and Sean Wilber of Consolidated Communications, and Mary Henze and Hany Fahmy of AT&T.

During the meeting, we focused primarily upon following up on previous conversations we have had with the Bureau and OEA regarding the endpoints for speed and latency testing.<sup>2</sup> We reiterated that the Commission should provide CAF recipients maximum flexibility as to such endpoints, permitting CAF recipients to test to or through a “Commission-designated IXP” if they wish, or testing to “the nearest Internet access point,” as the Commission provided in the *USF/ICC Transformation Order* when it first set forth the prospective requirement that CAF recipients test their broadband networks for compliance with speed and latency metrics.<sup>3</sup>

---

<sup>1</sup> See *Connect America Fund*, Order, 33 FCC Rcd 6509 (WCB/WTB/OET) (*Order*); see also, e.g., Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket No. 10-90 (Nov. 7, 2018) (ITTA Comments); Petition of USTelecom – The Broadband Association, ITTA – The Voice of America’s Broadband Providers, and the Wireless Internet Service Providers Association for Reconsideration and Clarification, WC Docket No. 10-90 (Sept. 19, 2018) (Joint Petition); Reply of USTelecom, ITTA, and WISPA to Opposition to Petition for Reconsideration and Clarification, WC Docket No. 10-90 (Nov. 19, 2018) (Joint Reply).

<sup>2</sup> See, e.g., Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 17, 2019) (Apr. 17 Letter).

<sup>3</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17706, para. 111 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

As to the latter conceptualization, we elaborated that one way the Commission could delineate the *USF/ICC Transformation Order*'s endpoint standard would be to permit speed and latency testing from the end-user interface to the first public Internet gateway in the path of the CAF-supported customer that carries the default free zone (DFZ) of the Internet routing table. There are several reasons why this definition is fitting. Among them: First, it is fully consistent with the Commission's holding in the *USF/ICC Transformation Order*, as quoted above.<sup>4</sup> Second, it better reflects where customer traffic is naturally routed to the Internet, and thus better fulfills the Commission's goal of measuring service from the customer's perspective.<sup>5</sup> Third, it is applicable to all CAF recipients, working with, for instance, large and small provider, and wireline and fixed wireless, network configurations. Fourth, testing to Internet gateways that carry the Internet routing table confers assurance that providers are testing to the edge of the Internet, thus diluting opportunities for gaming of the performance measurement regime. Fifth, the Commission can further verify performance by requiring providers to identify where test packets were routed for purposes of auditing test results.<sup>6</sup>

We also briefly reiterated that the Commission should require one latency test *per hour* during the testing period.<sup>7</sup> In implementing this requirement, the Commission should continue to afford providers flexibility to do more than the minimum required number of latency tests at subscriber test locations, so long as they include the results from all tests performed during testing periods in their compliance calculations.<sup>8</sup> In this regard, the Commission could *advise* providers that they may wish, at their option, to perform more frequent latency testing in order to safeguard against anomalous negative test results.

---

<sup>4</sup> See *id.* (including Figure 3 therein). Notably, this definition properly recognizes, in accordance with Figure 3, that transport only comes into play as far as getting traffic to the public Internet gateway, and only where the provider whose performance is being tested is not itself carrying the traffic to the public Internet gateway. *Contra Order*, 33 FCC Rcd at 6516, para. 19 (suggesting that testing also should include transport that a provider does not control, beyond the Internet core).

<sup>5</sup> See *Order*, 33 FCC Rcd at 6516, para. 19. Relatedly, the "first" public Internet gateway appropriately reflects that some providers may route their traffic to a gateway that technically is not the "nearest" to the customer. *Cf. id.* at para. 20 ("we find that there is no reason to limit testing to the provider's nearest IXP").

<sup>6</sup> See *id.* at 6509, para. 2 ("providers will be subject to audit of all testing data"); *USF/ICC Transformation Order*, 26 FCC Rcd at 17705, para. 109 (speed and latency test results will be subject to audit).

<sup>7</sup> See, e.g., Apr. 17 Letter at 1-2.

<sup>8</sup> See *Order*, 33 FCC Rcd at 6519, para. 27.

Ms. Marlene H. Dortch  
May 9, 2019  
Page 3

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

*/s/*

Michael J. Jacobs  
Vice President, Regulatory Affairs

cc: Suzanne Yelen  
Sue McNeil  
Ian Forbes  
Cathy Zima  
Alec MacDonell  
Stephen Wang